IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 554 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAHANGIRJI BAPUJI PITHAWALA

Versus

DY.COLLECTOR & LAO

Appearance:

1. First Appeal No. 554 of 1998
MRS KETTY A MEHTA for appellants
MR KT DAVE, ld.AGP for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 28/08/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

This appeal under Section 54 of the Land Acquisition Act, 1894 is directed against the judgment and award dated 25th July 1997 passed by the learned Assistant Judge, Surat, whereby the learned Judge disposed of Land Reference Cases Nos.118 of 1988 to 168 of 1988 by common judgment and award by partly allowing the same. The learned Judge, while disposing of the Reference Cases, passed the following order:

"All these references are partly allowed.

The opponents are hereby ordered to pay to the claimant, the claim of acquired land at the rate of Rs.20/- (Rupees Twenty only) per sq.mtr., instead of Rupees ranging from Rs.3/- to Rs.3.50 ps., as awarded by the Land Acquisition Officer and the additional compensation be paid to the claimants with solatium at the rate of 30% per annum on the aforesaid enhanced compensation and the claimants are also entitled to get 12% additional market value from the date of notification under Section 4 of the Land Acquisition Act, i.e. from 21.2.86, till the date of taking over the possession of land i.e. 18.6.86.

The claimants are also entitled to get the interest at the rate of 9% (Nine percent) per annum for the first year of taking over the possession of the land in the year 1986 and at the rate of 15% (Fifteen percent) per annum thereafter, excluding the amount of solatium, till the realisation of the amount, by the claimants. It is clarified that, the amount of interest should not be calculated on the amount of solatium.

Some of the lands are admittedly of new tenure lands and hence, 5% (Five percent) of the amount of award be deducted, for the new tenure lands.

The amount already received by the claimants should be deducted from the compensation calculated at the above rates.

The opponents to pay the proportionate cost to the claimants and they should bear their own.

The table annexed to this award form part of this award.

The copy of this judgment be put in the Land Reference Cases consolidated with this main reference.

Award be drawn accordingly."

Against the above decision, the original claimants except the present appellants filed appeals being First Appeals Nos. 5388 of 1997 to 5408 of 1997 under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code, 1908 for enhancement of compensation. It may be stated that First Appeals Nos.742 of 1998 to 792 of 1998 were filed by the Acquiring Body, i.e. original opponent No.2 - National Thermal Power Corporation ('NTPC' for short) challenging the said common judgment and award. This Court (Coram: M.H.Kadri & D.P.Buch, JJ.) heard the said appeals and cross appeals. By its common judgment and order dated 15.9.2000, the Division Bench dismissed First Appeals Nos.742 of 1998 to 792 of 1998 filed by the acquiring body. The Division Bench partly allowed First Appeals Nos. 5388 of 1977 to 5408 of 1997 filed by the claimants. The final directions given in paragraph 47 of the said decision are reproduced as under:

"First Appeals Nos. 5388 of 1997 to 5408 of 1997 filed by the claimants are partly allowed. The market value of the acquired lands of village Mora on the relevant date, i.e. February 21, 1986, is determined at the rate of Rs.22/- per sq.mtr. The common judgment and award dated July 25, 1997, rendered by learned Assistant Judge, Surat, in Land Reference Cases Nos.118 of 1988 to 168 of 1988 is modified to the extent that the claimants would be entitled to compensation of acquired lands of village Mora at the rate of Rs.22/- per sq.mtr. minus the amount awarded by the Land Acquisition Officer, with all the statutory benefits under Sections 23(1-A) and 23(2) and interest under Section 28 of the Act.

The direction given by the Reference Court to deduct 5% government share from the compensation payable to the claimants in case of new tenure lands is set aside. It is further held that the claimants shall not be entitled to solatium on the 12% increase awarded under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs in both the groups of appeals."

As stated above, the present appeal filed by the original claimant arises out Land Reference Case No. 118 of 1988 which was not heard along with the group of appeals preferred by the original claimants. Learned Counsel for the parties have stated before us that the reasoning recorded and the ultimate conclusion reached by the Division Bench is applicable to the present appeal. In this view of the matter, adopting the reasoning of the Division Bench in the decision rendered in First Appeals Nos. 5388 of 1997 to 5408 of 1997, we partly allow this appeal and pass the following order:

"The market value of the acquired lands of village Mora on the relevant date, i.e. February 21, 1986, is determined at the rate of Rs.22/- per sq.mtr. The common judgment and award dated July 25, 1997, rendered by learned Assistant Judge, Surat, in Land Reference Cases Nos.118 of 1988 to 168 of 1988 is modified to the extent that the claimants would be entitled to compensation of acquired lands of village Mora at the rate of Rs.22/- per sq.mtr. minus the amount awarded by the Land Acquisition Officer, with all the statutory benefits under Sections 23(1-A) and 23(2) and interest under Section 28 of the Act. The direction given by the Reference Court to deduct 5% government share from the compensation payable to the claimants in case of new tenure lands is set aside. It is further held that the claimants shall not be entitled to solatium on the 12% increase awarded under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment

Today 1995 (2) S.C. 583. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs".

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)

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